

Message Text

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ACTION L-03

INFO OCT-01 NEA-10 ISO-00 COME-00 EB-07 SCSE-00 SCA-01

SSO-00 INRE-00 CIAE-00 INR-07 NSAE-00 H-02 /031 W

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FM AMEMBASSY TEHRAN

TO SECSTATE WASHDC IMMEDIATE 2557

UNCLAS TEHRAN 6911

E.O. 11652: N/A

TAGS: BGEN, IR

SUBJECT: CONDUCT OF AMERICAN BUSINESS IN IRAN

REF: (A) TEHRAN 6753, (B) STATE 152191, (C) STATE 161265,
(D) TEHRAN 5592, (E) STATE 166292

1. ALTHOUGH EMBASSY WILL CONTINUE SEEK ADDITIONAL CLARIFICATION, AVAILABLE EVIDENCE STRONGLY POINTS TO DESIRABILITY FOR US TO NOTARIZE AFFIDAVITS. UNLESS OTHERWISE INSTRUCTED, WE PROPOSE TO DO SO AS OF JULY 20 TO AVOID UNDUE HARDSHIP ON US COMPANIES DOING BUSINESS IN IRAN. OTHER EMBASSIES HERE ARE ROUTINELY PERFORMING NOTARIALS FOR AFFIDAVITS. OUR RECOMMENDATION IS BASED UPON INFORMATION OBTAINED FROM GOVERNMENTAL AND PRIVATE SOURCES, AS FOLLOWS.

2. AFFIDAVITS ARE FILED ONLY "UPON REQUEST," I.E., AS DEMANDED BY A SPECIFIC GOVERNMENT ORGANIZATION PURCHASING THE PRODUCT OR SERVICE AND NEED NOT BE VOLUNTEERED.

3. THE AFFIDAVITS APPLY ONLY TO THE SPECIFIC CONTRACTS OR BUSINESS ACTIVITIES DESCRIBED IN THE SPACE PROVIDED IN PARAGRAPH 2 AS "BUSINESS ACTIVITIES" AND CAN BE DELIMITED THEREIN PRIOR TO SIGNATURE OF THE AFFIDAVIT IN ORDER TO AVOID AMBIGUITY. IT IS NOT A "TICKET TO ENGAGE IN BUSINESS ACTIVITIES" (SMALL "B" AND SMALL "A") IN GENERAL.

4. THERE SEEMS TO BE NO RETROACTIVE INTENT OR APPLICATION APART
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FROM THAT WHICH MAY BE DIRECTLY APPLICABLE TO THE SPECIFIC CON-

TRACT OR TRANSACTION IN QUESTION. IT IS POSSIBLE, HOWEVER, THAT SOME MAJOR ONGOING CONTRACTS CONCLUDED PRIOR TO THE JUNE 9 ANNOUNCEMENT OF THE AFFIDAVIT REQUIREMENT MAY ALSO BE MADE SUBJECT TO IT SHOULD SPECIAL ATTENTION BE DRAWN TO SUCH CONTRACTS OR TRANSACTIONS AS HAVING SOME IRREGULARITY ATTRIBUTED TO ITS AWARD OR TO THE SIZE OF FEES OF COMMISSION PAID.

5. AS YET, THE REQUIREMENT APPLIES ONLY TO FOREIGN FIRMS DOING BUSINESS WITH IRANIAN GOVERNMENT ORGANIZATIONS THE LATTER EXCLUDING COMPANIES IN WHICH THE GOVERNMENT HAS A MINORITY INTEREST.

6. AS GOI HAS REPEATEDLY MADE CLEAR. THERE IS NO INTENT TO DISCOURAGE LEGITIMATE AGENTS OR CONSULTANTS; HOWEVER, FEES AND COMMISSIONS PAID SUCH PERSONS, INCLUDING LAWYERS AND ACCOUNTANTS, IN CONNECTION WITH THE CONTRACT OR TRANSACTION MUST BE LISTED ON THE AFFIDAVIT. THAT COULD BE THE PROCEDURE FOR SHORT-FORM AFFIDAVIT AS WELL. "REASONABLE" FEES PAID FOR SERVICES RENDERED WILL BE ACCEPTABLE BUT QUESTIONS MAY BE RAISED REGARDING FEES WHICH APPEAR OUT OF LINE WITH RELATION TO THE SERVICE PROVIDED.

7. THERE IS NO DISTINCTION MADE BETWEEN CONTRACTS FOR THE PROVISION OF SERVICES AND THOSE FOR PROVISION OF EQUIPMENT OR PRODUCTS.

8. NO SINGLE OFFICIAL OR GOVERNMENTAL AGENCY IS LIKELY TO BE DESIGNATED TO IMPLEMENT OR COLLECT THE AFFIDAVITS, BUT EACH GOVERNMENT ORGANIZATION WILL PERFORM THESE FUNCTIONS FOR ITS OWN CONTRACTS. HENCE, WE ARE UNLIKELY TO GET CLEAR, COMPREHENSIVE STATEMENT OR INSTRUCTIONS FROM GOI FOR SOME TIME.

9. THE REQUIREMENT THAT THE AFFIDAVITS BE NOTARIZED BY FOREIGN CONSULATES WAS REPORTEDLY DESIGNED TO KEEP THOSE EMBASSIES INFORMED REGARDING SUCH BUSINESS ACTIVITIES; HOWEVER, THE STIPULATION THAT THE AFFIDAVITS BE RECORDED AND THAT A CERTIFICATE OF RECORDING BE ISSUED IS RELATIVELY UNIMPORTANT. IN FACT, THE AFFIDIVIT REQUIRES ONLY A STATEMENT BY THE SIGNER THAT SUCH ACTIONS HAVE REQUESTED BY HIM OF THE CONSULATE.

10. THE POSSIBILITY OF EXPROPRIATION UNDER PARAGRAPH 5 OF THE UNCLASSIFIED

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AFFIDAVIT (REF C) APPEARS EXTREMELY REMOTE AND CONTRARY TO IRANIAN LAW. THE INTENT SEEMS CLEARLY TO REFER TO TERMINATION OF THE CONTRACT IN QUESTION, RATHER THAN TO DISSOLUTION OR EXPROPRIATION OF THE BUSINESS ITSELF.

11. THE EMBASSY BELIEVES THE AFFIDAVIT REQUIREMENT SHOULD BE ACCEPTED AT FACE VALUE AS AN ATTEMPT--UNDOUBTEDLY STIMULATED BY RECENT PUBLICITY IN THE US ADVERSE TO AMERICAN COMPANIES--TO

MAKE IT INCREASINGLY DIFFICULT FOR "INFLUENCE PEDDLERS" TO DO BUSINESS IN IRAN. (A SECONDARYMOTIVE MAY WELL REFLECT AN ATTEMPT TO COLLECT TAXES FROM AGENTS.)

12. ALL ELEMENTS OF THE EMBASSY HAVE RECEIVED NUMEROUS REQUESTS FOR GUIDANCE FROM US COMPANIES WHILE THE CONSULATE HAS PENDING MANY REQUESTS FOR NOTARIZATION OF AFFIDAVITS. SEVERAL COMPANIES FACE DEADLINES WHICH THEY FEAR TO IGNORE UNDER THREAT OF LOSS OF SUBSTANTIAL CONTRACTS. POSITIVE, RAPID ACTION IS REQUIRED TO PROTECT LEGITIMATE, SIZABLE AMERICAN BUSINESS INTERESTS IN IRAN.

13. IN VIEW OF THE ABOVE, UNLESS INSTRUCTED OTHERWISE, THE EMBASSY PROPOSES AS OF OPENING OF BUSINESS ON SUNDAY, JULY 20, TO NOTARIZE AFFIDAVITS PRESENTED TO IT FOR THAT PURPOSE, WITHOUT, HOWEVER, FORMALLY RECORDING OR ISSUING A CERTIFICATE OF RECORDING OTHER THAN THE USUAL RECEIPT.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 17 JUL 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975TEHRAN06911
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750247-0332
From: TEHRAN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750745/aaaabogq.tel
Line Count: 133
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION L
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 75 TEHRAN 6753, 75 STATE 152191, 75 STATE 161265
Review Action: RELEASED, APPROVED
Review Authority: greeneet
Review Comment: n/a
Review Content Flags:
Review Date: 11 MAR 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <11 MAR 2003 by ThomasVJ>; APPROVED <17 MAR 2004 by greeneet>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
06 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: CONDUCT OF AMERICAN BUSINESS IN IRAN
TAGS: BGEN, IR
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006